DEPARTMENT OF HEALTH & HUMAN SERVICES

Food and Drug Administration
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**STATEMENT OF**

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**BEFORE THE**

**SUBCOMMITTEE ON OVERSIGHT AND INVESTIGATIONS**

**COMMITTEE ON ENERGY AND COMMERCE**

**HOUSE OF REPRESENTATIVES**

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## INTRODUCTION

Mr. Chairman and Members of the Subcommittee, I am Robert J. Meyer, M.D., Director of the Office of New Drug Evaluation II, Center for Drug Evaluation and Research (CDER), U.S. Food and Drug Administration (FDA or the Agency). I oversee CDER's Division of Anesthetic, Analgesic and Rheumatologic Products, a division where many of the scheduled drugs are regulated, including opiate analgesic products. This division works closely with CDER's Controlled Substances Staff, which coordinates CDER's activities related to controlled substances and the Drug Enforcement Administration (DEA). I appreciate the opportunity to talk to you today about FDA's role in regard to controlled substances.

FDA is aware and concerned that some consumers are able to obtain controlled substances without a prescription, using the Internet. We recognize the seriousness of this issue and sympathize with the families and friends of individuals who have lost their lives as a result of prescription drug abuse and misuse. The Agency has taken many steps to prevent abuse and misuse of prescription drugs, while making sure they are available for patients who need them. FDA is committed strongly to promoting and protecting the public health by assuring that safe and effective products reach the market in a timely manner and monitoring products for continued safety after they are in use.

## THE FDA DRUG APPROVAL PROCESS

Under the Federal Food, Drug, and Cosmetic (FD&C) Act, FDA is responsible for helping ensure that all new drugs are safe and effective. Before any drug is approved for marketing in

the U.S., FDA must decide whether the studies submitted by the drug's sponsor (usually the manufacturer) have adequately demonstrated that the drug is safe and effective under the conditions of use proposed in the drug's labeling. It is important to realize, that "safe" does not mean free of risk, and that there always is some risk of potential adverse reactions when using prescription drugs. FDA's approval decisions, therefore, always involve an assessment of the benefits and the risks for a particular product. When the benefits of a drug are determined to outweigh the risks, and the labeling instructions allow for safe and effective use, FDA considers a drug safe for approval and marketing.

During the approval process, FDA assesses a drug product's potential for abuse and misuse. Abuse liability assessments are based on a composite profile of the drug's chemistry, pharmacology, clinical manifestations, similarity to other drugs in a class, and the potential for public health risks following introduction of the drug to the general population. If a potential for abuse exists, the product's sponsor is required to provide FDA with all data pertinent to abuse of the drug, a proposal for scheduling under the Controlled Substances Act (CSA), Title 21, *United States Code* (U.S.C.) §801 et seq., and data on overdoses.

The CSA requires the Secretary of Health and Human Services (HHS) to notify the Attorney General through DEA, if a "new drug application is submitted for any drug having a stimulant, depressant, or hallucinogenic effect on the central nervous system, …" because it would then appear that the drug had abuse potential (21 U.S.C. §811(f)). HHS has delegated this function to FDA.

The Agency assesses preclinical, clinical, and epidemiological data to determine whether a drug under review requires abuse liability studies, scheduling under the CSA, or a risk minimization

action plan, (RiskMAP) designed to reduce abuse, overdose, or diversion. FDA's job is not over after a drug scheduled as a controlled substance is approved. The goal of FDA's post-marketing surveillance is to continue to monitor marketed drugs for safety. This is accomplished by reassessing drug risks based on new data obtained after the drug is marketed and recommending ways of trying to manage that risk most appropriately.

**THE IMPORTANCE OF RISK MANAGEMENT**

Safety or risk assessment combined with efforts to minimize known risks comprise what FDA calls *risk management*. Risk management is the overall and ongoing process of assessing a product's benefits and risks, taking action as necessary to decrease known risks, and then tracking safety and making adjustments as necessary to assure that risks are kept in line with benefits.

As part of risk management, FDA may ask companies to collect specific information to improve the speed and sensitivity of detecting suspected safety problems. When this enhanced data collection is requested by FDA, it is called a pharmacovigilance plan. These exist for many long-acting and potent opioid products and contribute to safe use of the product by detecting, as rapidly as possible, adverse outcomes, including misuse, overdose, abuse and diversion. Once problems are detected there need to be actions to address them.

Actions to minimize risks that go beyond providing an informative package insert are called risk minimization action plans or RiskMAPs. These are strategic safety programs designed to

decrease known product risks by using one or more interventions, such as specialized education or restrictions on typical prescribing, dispensing, or use. The small number of RiskMAPs that exist are largely customized programs, although consistent approaches are being sought, for example, in the control of drugs that cause birth defects, such as thalidomide and isotretinoin.

## FDA COLLABORATES WITH OTHER GOVERNMENT AGENCIES, PROFESSIONAL GROUPS, AND INDUSTRY

Under the FD&C Act, FDA is responsible for the approval and marketing of drugs for medical use and for monitoring products for continued safety after they are in use, including controlled substances. DEA is the lead Federal agency responsible for regulating controlled substances and enforcing the CSA. The CSA separates controlled substances into five schedules, depending upon their abuse potential and medical use. Schedule I controlled substances have the highest potential for abuse and have no medical use while Schedule V substances have the lowest abuse potential. Schedule II substances also have a very high potential for abuse but are approved for medical use. Schedules III, IV, and V substances and drugs have lower abuse potential and fewer controls under the CSA. The U.S. Immigration and Customs Enforcement (ICE) is the lead agency for enforcing transborder smuggling laws. ICE focuses its efforts on individuals and organizations involved in the smuggling of counterfeit pharmaceuticals both controlled and non-controlled, scheduled narcotics, medical devices and medical test kits via the Internet.

The President's 2005 National Drug Control Strategy has recognized the effectiveness of state prescription drug monitoring programs, and called on the pharmaceutical industry, medical community and state governments to become partners in an effort to prevent the illegal sale, diversion, and use of prescription drugs in a way that does not impede legitimate medical needs.

FDA is continuing to meet with DEA, ICE, the Substance Abuse and Mental Health Services Administration (SAMHSA), the National Institute on Drug Abuse (NIDA), the Office of National Drug Control Policy (ONDCP), the Centers for Disease Control and Prevention, the American Medical Association (AMA), and industry to share information and insights needed to address the problem of prescription drug abuse as described below.

FDA and DEA meet regularly to discuss new ways to prevent prescription drug abuse and misuse. In addition to assisting one another with criminal investigations, as described below, FDA (or other components of HHS) is working on the following initiatives:

*Task Force Participation* – FDA participates in a number of task forces and other groups. Agents of FDA's Office of Criminal Investigations (OCI) frequently participate in and/or assist many DEA-led Federal-state task forces throughout the country focusing on the illegal sale of controlled prescription drugs. FDA and DEA are members of the following working groups: Cross Border Pharmacy Working Group, Interagency Pharmaceutical Task Force, Permanent Forum on International Pharmaceutical Crime, Interagency Committee on Drug Control, Federal Trade Commission/FDA Health Fraud Working Group, and a working group composed of representatives from HHS (including FDA, SAMHSA, the National Institutes of Health, and NIDA), DEA, ONDCP, and other agencies to address issues of drug abuse and control under the

CSA. ICE and CBP participate in many of these working groups in an effort to collaborate with FDA in reducing the quantity of illegal dangerous drugs imported into the U.S. as well as to improve information sharing, increase public awareness and work cooperatively with industry.

In March of 2004, a cooperative effort was announced which included various efforts aimed at addressing prescription abuse, including careful consideration of labeling and commercial promotion of opiate drug products and additional efforts to investigate and prosecute "pill mills" - Internet pharmacies that provide controlled substances illegally.

In addition, FDA is a member, along with other HHS agencies (SAMHSA and NIDA), DOJ, DEA, DHS, ONDCP, and other Federal agencies, of the Synthetic Drugs Interagency Working Group (SDIWG), which was established to implement the recommendations of the National Synthetic Drugs Action Plan. Prescription drug abuse is one of the many topics that the Plan's recommendations address. Some other topics directly involving FDA include the use of over-the-counter pseudoephedrine to manufacture methamphetamine, Internet sales of drug products, and working with drug manufacturers to reformulate abused drug products .

*Assessment of New Products With Abuse Potential* – FDA provides DEA with a scientific assessment of a certain drug product's potential for abuse and misuse. In addition, DEA often participates in FDA public meetings to provide advice and recommendations to the Agency on scheduled drugs.

**FDA/DEA JOINT ENFORCEMENT EFFORTS**

DEA is the lead Federal agency responsible for regulating controlled substances and enforcing the CSA. However, the complexity of the cases and the solutions to the problems of misuse, overdose, and diversion of prescription drugs requires the collaboration of DEA and FDA, as well as state and non-governmental entities.

FDA's OCI works closely with DEA, as well as ICE, on criminal investigations when there is a nexus between sales of non-controlled and controlled substances. Both FDA and DEA have utilized the full range of regulatory, administrative, and criminal investigative tools available, as well as been engaged in extensive cooperative efforts with local law enforcement groups, to pursue cases involving controlled substances. FDA regularly consults with ICE on their web monitoring procedures for Internet pharmacies. Headquarters representatives from both FDA and ICE meet on a regular basis to share information, and to coordinate investigations.

**CONCLUSION**

FDA will continue to carefully review the new drug applications for controlled substances, create effective RiskMAPs, and work with DEA to appropriately schedule controlled substances and enforce the FD&C Act and CSA to take down bad actors trying to illegally sell these products over the Internet. We continue to work with other agencies to address the myriad of issues related to synthetic drugs and prescription drug abuse. These problems are broad in reach and implications and we are committed to collaborating with our partners – Federal, state and local

officials, professional societies, and industry - to prevent abuse and help ensure that these important drugs remain available to appropriate patients through appropriate channels.

I would like to thank the Subcommittee for this opportunity to testify today on this important issue. I would be pleased to respond to any questions.